

5. Midwest ISO requests waiver of the Commission's 60-day notice requirement to make the IA effective as of July 18, 2003.

Notice of Filing and Further Pleadings

6. Notice of Midwest ISO's filing was published in the Federal Register, 68 Fed. Reg. 44,938 (2003), with interventions, comments and protests due on or before August 7, 2003. On August 7, 2003, Otter Tail filed a motion to intervene and the Western Area Power Administration (Western) filed a motion to intervene and protest. On August 22, 2003, FPL Energy filed a motion to intervene out of time and answer to Western's protest. On August 22, 2003, Midwest ISO and Otter Tail filed answers to Western's protest.

7. Western, who is currently a party to an interconnection agreement with Otter Tail, states that Otter Tail must clarify its intention regarding the future operating status of Western's Edgeley Breaker 344 and enter into a new interconnection agreement with Western to define how Western and Otter Tail will operate their systems if the existing interconnection is closed. Western points out that Otter Tail has recently requested that Western close Edgeley Breaker 344 (which is located at Otter Tail's interconnection with Western at Western's Edgeley Substation), although Midwest ISO's single line diagram attached to Appendix A of the IA indicates that this interconnection will normally be open. Western is concerned that Otter Tail's existing interconnection agreement with Western is insufficient to operate Edgeley Breaker 344 in a closed position, and expresses its willingness to work with Otter Tail to develop appropriate modifications to their interconnection agreement to define how their systems will operate if the interconnection is closed.

8. In their answers, the parties state that Western's concerns should not delay the Commission's acceptance of the IA and support maintaining Edgeley Breaker 344 in an open position until the parties resolve their concerns. Otter Tail clarifies that it intends to normally operate the Edgeley tie in an open configuration when the wind generation facility is generating, and along with Midwest ISO, pledges to work with Western to address Western's concerns regarding Edgeley Breaker 344.

Discussion

A. Procedural Matters

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2003), the timely, unopposed motions to intervene of Western and Otter Tail serve to make them parties to this proceeding. We find good cause to grant FPL Energy's untimely motion to intervene, given its interest in the proceeding, the early stage of the proceeding, and the absence of any undue prejudice or delay to any party.

10. Rule 213 of the Commission's Rules of Practice and Procedure prohibits an answer to protests, unless otherwise ordered by the decisional authority. We will accept Applicants' answers, as they aid us in the decisionmaking process.

B. Analysis

1. Transmission Service Credits for Payment of Network Upgrade Costs

11. Midwest ISO explains that the IA contains a Letter Agreement that establishes the amount and mechanism for crediting or otherwise reimbursing FPL Energy for the payments it makes for network upgrades. Section 9.2.1 of the IA states that FPL Energy must reimburse Otter Tail for Otter Tail's expenditures to build a switching station on the network side of the point of the interconnection. Under the Commission's policy, these facilities are network facilities for which the generator must receive transmission service credits, with interest, when the generator takes the delivery component of transmission service. Midwest ISO states that the Letter Agreement is the method by which Otter Tail and FPL Energy agree that FPL Energy will receive credits.¹

12. Pursuant to the Letter Agreement, the April 1, 2003 Power Purchase Agreement (PPA) between FPL Energy and Otter Tail would govern the transmission service credits due to FPL Energy under the IA. FPL Energy would receive the credits through the recovery of the contract rate for the sale of energy to Otter Tail under the PPA.

13. We will not accept this provision because it is not consistent with Commission policy. In the context of interconnections, our transmission pricing policy is implemented through transmission service credits; the generator pays up front for upgrades to the transmission network needed to interconnect the generator, but when the generator takes actual delivery service, it receives credits against the full transmission rate until it has been paid back, with interest. In this way, the rate for delivery service is capped at the higher of embedded costs or incremental costs, and the Commission's prohibition against "and" pricing is not violated. In accepting Midwest ISO's pro forma IA, the Commission noted that the pro forma IA did not contain a mechanism to provide transmission service credits for network upgrades and conditioned its acceptance of the pro forma IA on Midwest ISO's providing credits consistent with Commission policy.

¹ Section 9.2.2 of the IA provides, "Credits to Generator (or a third-party designated by Generator), if any, for amounts previously paid by Generator under Section 9.2.1., will be provided in accordance with any cost recovery method that the Transmission Owner files and the FERC accepts as applicable under the Midwest ISO OATT."

The IA is not consistent with the Commission's policy.² Whether FPL Energy receives the correct transmission service credits could not be tested or verified, since the parties did not file the PPA and, in any event it is difficult if not impossible to establish what Otter Tail would have paid for FPL Energy's power absent the credit. Therefore, we will conditionally accept the IA subject to the parties refiling the IA within 15 days of the date of this order to provide for transmission credits and interest consistent with Commission policy.

2. Edgeley Breaker 344

14. The single line diagram in Appendix A of the IA indicates that the interconnection to Western's Edgeley Substation would normally be open. This is the current operational status of Western's Edgeley Substation, which would not change with the addition of the proposed point of interconnection in the IA. Section 4.3³ of the IA requires Otter Tail and Midwest ISO to operate the transmission system in a safe and reliable manner, in accordance with Good Utility Practice. Accordingly, we expect Midwest ISO and Otter Tail to coordinate with neighboring transmission systems, including Western, to ensure reliable operation of the interconnected grid. We note that the parties say they are willing to work with Western to address its concern, and Otter Tail says it intends to keep the Edgeley Breaker open until Western's concerns are addressed. With these understandings, we believe that Western's concerns have been addressed. We will accept the proposed IA, to be effective on July 18, 2003.

² Midwest Independent Transmission System Operator, Inc., 97 FERC ¶ 61,136 (2001). We note that in the Commission's Final Interconnection Rule, Standardization of Generator Interconnections and Procedures, Order No. 2003, FERC Stats & Regs. ¶ 31,146 at P 698 (2003), subject to its approval, the Commission will continue to allow considerable flexibility regarding the interconnection pricing policy that a Transmission Provider that is an independent entity, such as an RTO or ISO, chooses to adopt. However, we would not allow RTOs/ISOs to implement crediting against power (rather than transmission) prices, in any event.

³ Section 4.3 of the IA provides:

The Midwest ISO and Transmission Owner shall cause the Transmission System and Transmission Owner Interconnection Facilities to be operated, maintained and controlled (i) in a safe and reliable manner; (ii) in accordance with Good Utility Practice; (iii) in accordance with the Interconnection Guidelines, applicable operational and/or reliability criteria, protocols and directives, including those of the Applicable Reliability Council; (iv) in accordance with Applicable Laws and Regulations; and (v) in accordance with the provisions of this Agreement.

The Commission orders:

(A) The IA is hereby accepted for filing, to become effective on July 18, 2003, subject to the modifications discussed in the body of this order.

(B) Midwest ISO's request for waiver of the Commission's 60-day prior notice requirement is hereby granted, as discussed in the body of this order.

(C) Within 15 days of the date of this order, Midwest ISO must file a revised IA reflecting the changes discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.